HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 729 of 2001 (2234/1984 old number)

Surendra Singh
S/o Late Sh. Nanwan Singh
R/o Vill. Jiwai, P.S. Pauri
District Garhwal ……Appellant

Vs.

Sachidanand and six others ……..Accused/Respondents

Sri G.S. Sandhu, A.G.A. for the State/Appellant.
Sri Kuldeep Rawal i/b for Sri Lokendra Dobhal learned counsel for the respondents-accused.

Hon'ble Irshad Hussain, J.

The appellant is since deceased and the report of his death had been received on record.

This appeal was filed by the complainant-Surendra Singh under section 378 of the Code of Criminal Procedure (for short 'Code'). Special leave to appeal was accorded on 10.8.1984.

The deceased Manwar Singh – the father of the complainant-appellant was the resident of village Jiwai, District Pauri Garhwal. There were party factions in the village and one of the faction was being led by the said deceased. The other village faction was headed by one of the respondents-accused namely Sachidanand and admittedly they were entertaining enmity since long.

According to the prosecution version, on 15.9.1972 deceased-Manwar Singh returned to his house at 3:00 PM, took tea and retired to his room at about 8:00 PM. Next day in the morning his brother Jai Singh raised an alarm that Manwar Singh had been murdered. The dead body of Manwar Singh was found hanging by a cloth from the rafter of the roof of the room. The prosecution set-up the case that the Manwar Singh was strangulated and thereafter his dead body was pulled up and hanged by the rafter of the roof of the room to show that it was a case of suicide. The matter was reported to the Circle Patwari and after registration of the case

investigation was taken up. Last part of the investigation was made by witness Tej Singh (PW-15) who had submitted the final report. On a protest petition being preferred by the appellant the cognizance was taken and later on the respondents-accused were sent up to stand trial.

As is evident there was no direct evidence in the case and the case of the prosecution rests entirely on the circumstantial evidence. The learned Sessions Judge, Pauri Garhwal thoroughly examined and analysed the prosecution evidence in the light of the settled principle on which the circumstantial evidence in a case need to be scrutinised but was not inspired by the theory put forward by the complainant that the death of the Manwar Singh was the result of stragulation and that it was not a case of suicide. The brother of Manwar Singh who first came to know about the dead body was also examined to show that in the night there was some noise from the room of the deceased and thereafter the respondents-accused were seen coming down the shop and went away from there. Witness Bahadur Singh (PW-4) was thus produced as the star witness of the prosecution but his evidence was also not found reliable on appreciation by the learned Sessions Judge. It was found that he was a mere chance witness as he had no cogent reason to be there in the odd hours of the night near the room of the deceased and that he being the close relative of the deceased was named, as such, in an attempt to support the prosecution story.

Another relation witness Bhopal Singh (PW-11) was also cited as a witness as having seen the accused coming out of the house of the deceased. The evidence was also rejected by the learned Sessions Judge and rightly so because there was no occasion for him to be there in the odd hours of the night particularly when none was aware that Manwar Singh had met unnatural death in his house under the circumstance not know to anyone.

From above, it is evident that there was no evidence whatsoever as may have in any way established the chain of circumstances to prove the guilt of the respondents-accused or any of them and therefore the learned Sessions Judge was fully justified in coming to the conclusion that the charges against the accused were not established beyond doubt. The

respondents-accused were therefore rightly acquitted of the charges under section 147, 302 & 149 IPC. On reappreciation of the evidence also there is no merit in the prosecution case and therefore the appeal is liable to be dismissed.

The appeal is hereby dismissed.

(Irshad Hussain, J.)

Dated 7.5.2004

Rawat